

**UNITED STATES OF AMERICA  
BEFORE THE NATIONAL LABOR RELATIONS BOARD  
REGION 16**

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UNITED STATES POSTAL SERVICE,	)	
	)	
Respondent	)	
	)	
and	)	Case     16-CA-189702
	)	16-CA-191290
	)	
JASMINE K. CASNEL, an Individual	)	
	)	
Charging Party	)	

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**RESPONDENT'S POST HEARING BRIEF**

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Respondent, United States Postal Service ("Postal Service" or "Agency"), pursuant to Section 102.42 of the Board's Rules and Regulations, as amended, hereby submits its post-hearing brief. The hearing on this matter was held before Administrative Law Judge Robert A. Ringler on June 5-6, 2018 in Houston, TX. According to the order of Arthur J. Amchan, Deputy Chief Administrative Law Judge, post-hearing briefs must be submitted on or before July 27, 2018.

For the reasons set forth in more detail below, Respondent requests that the allegations set forth in Charge 16-CA-189702 & 16-CA-191290 be dismissed. Specifically, the evidence and testimony presented demonstrate no violation of Sections 8(a)(1) and (3) of the Act.

**I.     BACKGROUND**

This Complaint arises out of the unfair labor practice charge filed by the Charging Party, Jasmine Casnel. The Complaint alleged that Postmaster Terri Taylor

made several threats against the Charging Party for engaging in alleged protected activity, and ultimately terminated her employment in violation of Sections 8(a)(1) & (3) of the Act. (Paragraphs 6 & 7 of the Complaint).

However, the testimony and evidence shows that (a) Ms. Casnel's story is replete with contradictions; (b) Ms. Casnel had previous discipline and a bad reputation, (c) the termination was based on her gross insubordination and had no relationship to her prior protected activity, and (d) Ms. Taylor did not participate in the decision to terminate Ms. Casnel. The General Counsel only had one witness out of the entire facility who made any attempt to corroborate Casnel's story (Shantel Williams). Even the former steward, Conan Gonzales, stated that Ms. Casnel was difficult to deal with. Simply put, the General Counsel has failed to make a prima facie case to support the Complaint. For all these reasons and the statement of facts and argument below, this Complaint should be dismissed.

### **Statement of Facts**

There are three key dates or incidents in the record relating to Ms. Casnel's performance issues. The first was the incident on or about July 13, 2016, (or July 18, 2016, the record is conflicting) incident where Ms. Casnel left her case to solicit other employees, even though she was not a steward and that is not permitted even for stewards either unless they're on union time.

The second incident was her insubordinate act on July 12, 2016, that led to Ms. Casnel receiving a 14-day suspension. This was later reduced to a 7-day suspension.

The third was her act of gross insubordination on September 27, 2016, that resulted in her emergency placement and eventual removal on December 2, 2016.

Ms. Casnel was a city carrier assistant<sup>1</sup> (“CCA”), letter carrier in Katy, Texas, from November 13, 2014 to her last day of work, which was September 27, 2016, with a removal notice dated December 2, 2016. (Tr. p. 23). Sometime in April 2016 Ms. Terri Taylor became the Postmaster for Katy. (Tr. p. 231) Shortly after her arrival, Ms. Taylor offered a position as a 204B temporary supervisor to Ms. Casnel. (Tr. pp. 41-42)<sup>2</sup> Notwithstanding that offer of promotion in April, Ms. Casnel testified that Ms. Taylor said to her around the end of June that “I’m going to get you fired before I promote anyone.” (Tr. p. 47). However, that alleged threat was not directly substantiated by any other testimony.<sup>3</sup>

Ms. Casnel testified that, on or about July 18, 2016, she had a conversation in the morning while casing her mail with another CCA, Antoinette Johnson, about the “hostile environment and the harsh treatment that Terri Taylor was treating CCAs” (Tr. p. 49). (*Counsel for the General Counsel referred to the date at July 13, 2016, “more or less” in his direct examination of Terri Taylor – Tr. p. 252*). In Exhibit 10, discussed infra, Ms. Taylor gave a statement identifying the date of Ms. Casnel’s unauthorized solicitation activity as July 13, 2016.<sup>4</sup>

Ms. Casnel testified that, at that point, she gave Ms. Johnson a “Form 13”.<sup>5</sup> Subsequently, Ms. Johnson and Ms. Casnel walked around the facility giving out form 13’s to various unspecified carriers at approximately 9:30 AM. (Tr. p. 50). Ms. Taylor

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<sup>1</sup> The witness’ description of the City carrier assistant position is on Tr. p. 26

<sup>2</sup> A 204B supervisor position is someone that is a temporary supervisor and does all the duties of a regular supervisor. (Tr. p. 39)

<sup>3</sup> Ms. Shantel Williams testified vaguely about a statement Terri Taylor allegedly made about getting rid of Casnel (Tr. 174) (“She was referencing something about she was going to get rid of her, because she didn’t know her place.”)

<sup>4</sup> 7/13/16 - I told Jasmine that wasn’t her job and she needed to get back to her case. She was walking around the building handing out 13s to the CCAs. From my understanding, they had a meeting and discussed requesting representation to get rid of me.

<sup>5</sup> An example of a form 13 can be found in Joint Exhibit 8, p. 3. See also Tr. pp. 47-48 for Ms. Casnel’s description of the purpose for a form 13.

accosted Ms. Johnson about her soliciting activity and then announced to the workroom floor that Ms. Johnson needed to get back to her case, and “Jasmine is not no union steward, and she don't need to be soliciting anything to anybody.” Tr. p. 50.

It is important to note that there are no allegations that other employees who may have been involved in this alleged protected activity have suffered any alleged retaliation, including Ms. Johnson. Nor is there any evidence in the record that employees at the Katy Post Office have suffered any retaliation for any other protected activity.

Ms. Taylor was very clear in her testimony that her insistence on Ms. Casnel staying at her case had nothing to do with her alleged union activity. Employees can't keep “walking the floor.” If they want to speak to their steward they have to ask their supervisor to get union time. (Tr. p. 417). And this is because, as the Postmaster, she has a “small window” “to get every carrier out of that building and get to the street for delivery.” (Tr. p. 417).

Ms. Taylor then called the union hall to request their assistance with Ms. Casnel's behavior. Ms. Casnel testified that she overheard Ms. Taylor talking on the phone and saying “put a leash on her” (meaning Ms. Casnel). (Tr. p. 58). Ms. Casnel testified that she later learned Ms. Taylor was talking to the union hall about Ms. Casnel leaving her case and soliciting signatures on a form 13. (Tr. p. 51). Ms. Casnel testified that afterwards, around 11 AM, a union steward (Conan Gonzales) told her ...

that Terri Taylor did not want me going around giving out paperwork, and that if I'm not a union steward, I don't need to give anybody any paperwork or solicit anyone during work hours.”

(Tr. p. 52).

When asked what the “leash” comment meant, Conan Gonzales testified “I took it to mean she's getting out of control, come and get her.” (Conan Gonzalez direct Tr. p. 216).

Ms. Taylor was asked by Respondent’s counsel why she was so adamant about Ms. Casnel staying at her case.

Q. So when you see a carrier not at their case, that's an issue for you because of the timeliness issue, getting the mail out in time?

A Yes, because the contract says you're supposed to work quietly and diligently, and you're supposed to be at your case at all times.

Q So was Ms. Casnel unusual in this that she was -- spent less time at her case than other carriers?

A Yes. She walks around, and she would tell the supervisor what she going to do, what she not going to do. (Tr. p. 418).

Q And so I want to go back to the incident where you called the union hall and said, Get a leash or latch on her. What is your recollection of that incident?

A I had asked Conan [Gonzales] to talk to her, and he said, “Ms. Taylor, I can't control her.” And then I called the union hall, and that's when I called the union hall. I was getting frustrated, and I said, Look, you all got to do something, because I'm tired.

(Tr. p. 419).

Notwithstanding Ms. Casnel’s apparent objections to the “leash” statement attributed to Ms. Taylor, Ms. Casnel never filed a grievance over that incident.

However, three days later, on July 21, 2016, Ms. Casnel did file a grievance over a perceived lack of respect from Ms. Taylor. (Joint Exhibit 8). The resolution of that grievance, signed by Ms. Taylor and Mr. Gonzales, was “Both parties agree to a mutual agreement to treat each other with dignity and respect.”

When asked on cross examination about this settlement and treating each other with dignity and respect, Mr. Gonzales testified as follows:

Q. Was that just following a formula, or were there issues with the way Ms. Casnel was treating Ms. Taylor?

A As I stated in another -- formula. That was formula. That agreement was formula. Hey, both of them just need to treat each other with dignity and respect.

Q So were there issues with the way Ms. Casnel reacted to Ms. Taylor's management that she needed to also modify her behavior?

A True.

Q Okay. Did you ever have any difficult interactions with Ms. Casnel yourself?

A I may have.

Q Can you repeat any of those?

A I may not be able to recall, but the way the millennials think today and the way I was brought up, two different thought processes.

Q So did Ms. Casnel ever lose her temper and yell at you?

A She may have.

Q On more than one occasion or one occasion?

A Maybe more than one occasion.

(Tr. pp. 221-222)

On August 1, 2016, Ms. Casnel was given a Notice of 14-Day Paper Suspension.<sup>6</sup> The reason given was:

On July 12, 2016, you were given instruction to carry a split on route 4945. The mail was brought to you and place in your vehicle, you took the mail out of the vehicle placed it on the ground and refused to deliver it.

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<sup>6</sup> A "paper" suspension is a paid suspension. (Tr. p. 247)

(Joint Exhibit 7(a)).

Ms. Casnel, of course, testified that she was not being insubordinate. (Casnel Cross - Tr. p. 139). Ms. Casnel also previously testified, when discussing her removal, that she had never had a chance to correct her behavior. (Tr. p. 128). However, when asked about this suspension, Ms. Casnel testified that possibly yes, she needed to correct her behavior. (Casnel Cross - Tr. p. 140)

Ms. Casnel also testified that, up until this 14 day suspension, she had no previous discipline in her record. (Tr. p. 96). However, Respondent provided a January 11, 2016, 7-day suspension she had received for a preventable vehicle accident. (Respondent's Exhibit 3). (Tr. p. 396). Ms. Casnel, naturally, denied ever having received this discipline. (Tr. p. 438).

Ms. Shelia Smith, the 204B supervisor who gave Ms. Casnel the 14-day suspension, had a different recollection of the events that occurred on July 12, 2016. Ms. Smith testified that she had given Ms. Casnel a "split" or additional mail, to take with her when Ms. Casnel left on her delivery route. [See *Tr. pp. 370-371 for an explanation of a split*]. However, Ms. Casnel left the split in the office when she departed. (Tr. p. 371). So Ms. Smith met Ms. Casnel at a stopping point, or "hub" [explained at *Tr. p. 371*] to give her the additional mail. When Ms. Smith tried to give Ms. Casnel the additional mail, she threw it on the ground and said she wasn't taking it. (Tr. p. 373).

When asked on cross by Counsel for the General Counsel why she gave Ms. Casnel a suspension, Ms. Smith answered:

A Yes, because it was very disrespectful. We was at Academy. There was customers outside, and she threw the mail. The customers

were looking at me like, you know, what happened. Is that our mail? So --

(Tr. p. 378).

Ms. Smith further testified on cross that she didn't give another employee discipline in an earlier incident because she had a discussion with the union steward about the insubordinate behavior, and "because after that, the employee came back and apologized. And she followed instructions after that. After that, I had no problems with her anymore." (Tr. p. 385).

Throughout her testimony, Ms. Casnel attempted to portray Ms. Taylor's treatment of her as personal. However, on cross, Ms. Casnel contradicted herself.

Q So would it be fair to say that, according to your perspective and Mr. Pongrass, that Ms. Taylor treated everybody the same? It was a hostile work environment for everybody.

A Yes.

(Casnel Cross - Tr. p. 144)

Moreover, the allegation of some personal vendetta by Ms. Taylor against Ms. Casnel was contradicted by witnesses for the General Counsel. Ms. Shantel Williams also stated that she agreed with her statement in Exhibit 10 that "Ms. Taylor yells at everyone." (Tr. p 180). Mr. Gonzales also testified that Terri Taylor yelled at everyone (Tr. p. 208). Ms. Taylor also credibly and repeatedly testified that she was not bothered by Ms. Casnel's other protected activity such as grievances, EEO complaints or the harassment investigation. (Tr. pp. 253; 258; 412-413; 416; 420).

Testifying about General Counsel Exhibit 2 (phone records), Ms. Casnel elaborated at length about her efforts to get intervention on what she felt was Ms. Taylor's conduct towards her. (Tr. pp. 65-73). This culminated in an official investigation



at the Katy Post Office between July 28 and August 12, 2016, which was memorialized in Joint Exhibit 10, which was issued on 08/19/2016. That investigation concluded that no harassment occurred.

However, there were statements in Exhibit 10 that portrayed Ms. Casnel in a less than flattering light. Mary Zepeda, a Bulk Mail Clerk at the Katy Post Office, wrote in her statement about an incident where Ms. Casnel was repeatedly asked to move her car that was blocking traffic in the Post Office parking lot. Finally steward Conan Gonzales went out to ask Ms. Casnel to move her vehicle and Ms. Zepeda wrote that "Ms. Casnel went crazy and started yelling at Conan about moving her car."

Supervisor Roshannon Jones testified about her statement in Exhibit 10, where she wrote that "Ms. Casnel has a bad attitude and has no respect for management. She is an excellent worker, but her attitude is bad." When asked to elaborate, Ms. Jones had the following to say:

A I stated that Ms. Casnel has a very bad attitude, disregard for management. I've been -- I'm one of the laid back supervisors there at the office, and she's even given me issues here and there. She's had conflict with pretty much all of the management team at the post office, at the location.

Q Really? She's had conflict with all the managers there?

A Yes.

(Tr. p. 368)

Finally, on September 27, 2016, Ms. Casnel's insubordinate attitude caught up with her. At the time the Katy Post Office was undergoing route inspections to determine if carrier routes were properly structured for delivery within 8 hours. (Carrie Nelson direct - Tr. pp. 320-322). Ms. Casnel's testimony is that she was at the route inspectors' table giving her report when Ms. Taylor started "hollering" at her and being

aggressive because she was still on the clock when she should have clocked out already. (Tr. pp. 103-106). Throughout her testimony Ms. Casnel portrayed herself as the innocent victim and Ms. Taylor as the aggressor.

Ms. Casnel called the Harris County police and then Postal Police because she claimed she feared for her life. (Tr. p. 105). Subsequently the Postal Police came and conducted an investigation into Ms. Casnel's allegations that Ms. Taylor had touched or hit her. As a result the Postal Police issued an Investigative Memorandum on September 29, 2016. (Joint Exhibit 15).

That memorandum did not support Ms. Casnel's version of the events on September 27, 2016. Nor did any of the witnesses support Ms. Casnel's the claim that Terri Taylor had touched her.

Rather the record showed that Ms. Casnel was the aggressor in this situation. She testified that she was at the route examiner's table when the incident began, but none of the route examiners supported her version of events. The witnesses who were present at the time and who testified at the hearing portrayed Ms. Casnel as the shouting, insubordinate aggressor.

Carrie Nelson, the Postmaster of Sour Lake Post Office, was in Katy as the project leader for a team conducting a route examination. (Tr. 320-322). She testified that she did not see Ms. Taylor touch Ms. Casnel and that Ms. Casnel was clearly the aggressor. (Tr. p 324)

Bettra Parker, a letter carrier on detail for the route examination, testified that Ms. Casnel was shouting and was not being respectful or following instructions (Tr. pp. 335-336). Ms. Parker also testified on cross that Ms. Taylor treats employees with dignity and respect (Tr. pp. 338-339)

John Vandenberg, the Postmaster at Spurger, Texas, was also part of the route examination and witnessed the altercation between Ms. Taylor & Ms. Casnel. Mr. Vandenberg testified that he was very impressed with Ms. Taylor's demeanor. She kept a calm voice, calm demeanor, didn't shout back. (Tr. p. 349). According to Mr. Vandenberg, Ms. Casnel was shouting and the aggressor. (Tr. p. 353)

Because of her grossly insubordinate conduct, Ms. Casnel was placed on an emergency placement under article 16.7 of the CBA. (Tr. pp. 119-120 - Joint Exhibit 11(a)). Subsequently, the Postal Service sent Ms. Casnel a notice to appear for an investigative interview on October 11, 2016. (Joint Exhibit 11(b)). Ms. Casnel denied receiving this in a timely manner. (Tr. pp. 121-122). However these notices are sent three ways: regular mail, certified, and USPS tracking. (Tr. p. 310). In the Step B decision finding just cause for Ms. Casnel's removal (Joint Exhibit 14), the union stated that it "concedes that delivery of the notice was attempted at the grievant's home address on October 7, 2016, but states that the grievant 'does not pick up her mail on a daily basis.'" (See also Tr. p. 274 - Ms. Taylor's uncontradicted testimony that "she told her union steward that she don't check her mail every day.")

Therefore, given this contradictory statement and Ms. Casnel's inconsistent testimony throughout, it is more likely than not that she received one of the mailed notices and failed to appear anyhow. Certainly, her failure to check her mail cannot support any alleged due process failures on the Postal Service's part.

The Postal Service mailed Ms. Casnel a Notice of Removal ("NOPR") on October 12, 2016. (Joint Exhibit 11(c)). The NOPR was recommended by supervisor Tonya Allison in a Disciplinary Action Proposal or Form 1080 (Tr. p. 295) dated 10-11-16. (Respondent's Exhibit 2). Joel Compton, the Officer in Charge ("OIC") for Humble, TX

Post Office concurred with the removal. (Tr. p. 275). Mr. Compton also held the Step A grievance meeting in which he upheld the removal. (See Joint Exhibit 13).

As Labor Relations Specialist Clarissa Lott testified, managers do not have an independent right to process major discipline. 14-day suspensions and removals are reviewed and approved by Labor Relations. (Tr. p. 296). And Labor Relations will not approve a removal if they believe the documentation would not support a win in arbitration. (Tr. p. 296). Labor Relations' judgment on this removal was vindicated by the Dispute Resolution Team, which upheld the removal on December 2, 2016. (Joint Exhibit 14). (Evidently the Union declined to pursue this case to arbitration.) As the evidence shows, and as Ms. Taylor testified, she removed herself from the Removal process to avoid any possibility of bias. (Tr. p. 277).

A customer complaint dated July 23, 2016, was included as part of Ms. Casnel's removal file. (Respondent's Exhibit 4). When asked why Ms. Casnel was not disciplined for this complaint, Ms. Taylor testified that at the time she believed Ms. Casnel's denials, and she had just finished a 14-day suspension. (Tr. pp. 402-403). However, Ms. Taylor decided to put it in the removal file because of Ms. Casnel's "temper tantrums" and because a subsequent interview with the customer cast doubt on Ms. Casnel's version of the story.<sup>7</sup> (Tr. p. 403).<sup>8</sup>

Counsel for the General Counsel attempted to portray the apparent jump to a removal as an abrogation of the disciplinary process. (Tr. p. 15). However, as Ms. Taylor testified, under the CBA (Joint Exhibit Number 1 p. 93), disciplinary process for

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<sup>7</sup> This customer complaint was provided pursuant to the subpoena duces tecum in EEO file 4G-770-17 Casnel J. Vol. 2 Of 6, via an email to Counsel for the General Counsel on June 1, 2018

<sup>8</sup> This customer complaint was offered to support Respondent's contention that Ms. Casnel was a less than ideal employee.

CCA's is not progressive – there is no Letter of Warning – it's a 7 day suspension and then removal. (Tr. p. 388).

**Summary of inconsistencies in Ms. Casnel's testimony:**

- Ms. Casnel's recollection of events is different from other testimony and evidence in the record. She claimed she asked for a pregnancy accommodation but provided no evidence that she submitted paperwork. No witness recalled this either.
- She claimed a hostile work environment and triggered an investigation, which did not support her allegations.
- She claimed Ms. Taylor targeted her individually but the testimony shows Ms. Taylor treated everyone the same.
- She claimed she was "touched" by Ms. Taylor during the incident leading to her removal but neither the Investigation nor the witnesses confirmed that story.
- She claimed Ms. Taylor was the aggressor, but no witnesses, including a bargaining unit witness, confirmed that story. She was universally portrayed as an insubordinate aggressor.
- She testified that she had no previous discipline but Respondent's Exhibit 3 says otherwise

**II. ARGUMENT**

**a. Respondent did not Violate section 8(a)(1) of the Act.**

Section 8(a)(1) provides that it shall be an unfair labor practice for an employer "to interfere with, restrain, or coerce employees in the exercise of the rights guaranteed in section 157 of this title." 29 U.S.C. § 158(a)(1). A violation of Section 8(a)(1) "is established by showing: (1) that employees are engaged in protected activities ...; (2) that the employer's conduct tends to interfere with, restrain, or coerce employees in those activities ...; and (3) that the employer's conduct is not justified by a legitimate and substantial business reason." Retlaw Broadcasting Co. v. NLRB, 53 F.3d 1002, 1006 (9<sup>th</sup> Cir. 1995); Fun Striders, Inc. v. NLRB, 686 F.2d 659, 661-62 (9<sup>th</sup> Cir. 1981).

Once the employer establishes a legitimate business reason, the NLRB has the burden to establish that the primary motive for the adverse action was to punish the employee for protected activity.” Id.

In the first instance, it is arguable whether Ms. Casnel was engaged in protected activity when she left her case and attempted to circulate form 13’s among the workforce. She was clearly in violation of the rule in Handbook M-41, City Delivery Carriers Duties and Responsibilities (Joint Exhibit 3), that carrier should “[a]ttend quietly and diligently to work. . . .” The Board has held that a Postal Service rule prohibiting solicitation of grievances **by stewards** during working time “is presumed to be valid in the absence of evidence that it was adopted for a discriminatory purpose. United States Postal Service & Nat’l Ass’n of Letter Carriers, Sunshine Branch 504, AFL-CIO, 350 NLRB 441, 452 (2007). Ms. Casnel was not even a steward and she was violating a valid work rule by leaving her case to solicit other employees. Her steward even agreed that she should not be leaving her case to solicit during work hours. (Tr. p. 52). And this was a consistent pattern of hers to ignore work rules and leave her case whenever it suited her. Respondent otherwise concedes that Ms. Casnel had engaged in protected activity in other instances.

Second, Ms. Casnel’s removal for insubordination was “justified by a legitimate and substantial business reason.” Retlaw Broadcasting Co. v. NLRB, 53 F.3d at 1006. The testimony by all the witnesses who were present on September 27, 2016, demonstrates that Ms. Casnel was insubordinate and the aggressor in the interaction with Ms. Taylor. Furthermore, removal under these circumstances was consistent with the disciplinary procedures for CCA’s. (See Joint Exhibit 1, p. 93).

Other than Ms. Casnel's uncorroborated and suspect testimony, there is no proof whatsoever that the decision to terminate her was based on other than legitimate business reasons. The General Counsel did not provide any proof that "the primary motive for the adverse action was to punish" Ms. Casnel for a previous grievance. This is especially so since the record and testimony show that the alleged primary actor, Postmaster Terri Taylor, had nothing to do with the removal decision. Therefore, the General Counsel has not met his burden and no violation of Section 8(a)(1) occurred.

**b. Respondent did not Violate section 8(a)(3) of the Act**

Section 8(a)(3) provides that it shall be an unfair labor practice for an employer "by discrimination in regard to hire or tenure of employment or any term or condition of employment to encourage or discourage membership in any labor organization." 29 U.S.C. § 158(a)(3).

In order to determine whether an employee's discharge, or other adverse action against them violated the Act, the Board utilizes the analysis articulated in Wright Line, A Division of Wright Line, Inc., 251 NLRB 1083, 1089 (1980), *enfd.* 662 F.2d 899 (1st Cir. 1981), *cert. denied*, 455 U.S. 989 (1982), approved in NLRB v. Transportation Management Corp., 462 U.S. 393, 399-403 (1983). "The General Counsel bears the ultimate burden of proving every element of a claimed violation of the Act." Des Moines Register & Tribune, 339 NLRB 1035, 1037 n. 5 (2003). In the instant matter the General Counsel has not met his burden because he has not established a *prima facie* case.

Under Wright Line, the General Counsel establishes a *prima facie* case of discrimination by showing that (1) the employee engaged in protected activity, (2) the employer had knowledge of that activity, and (3) union animus was a motivating factor.

Ozburn-Hessey Logistics, LLC and United Steelworkers Union, 359 NLRB No. 109 (May 2, 2013). The General Counsel must establish by a preponderance of the credible evidence that the perceived anti-union sentiment was a “motivating factor” for the adverse action taken. Wright Line, *supra*. To establish this, the General Counsel must prove that Ms. Casnel was engaged in protected activity, that Postmaster Taylor knew she was engaged in protected activity, and that the protected activity was a motivating reason for the decision to remove Ms. Casnel.

Notwithstanding Ms. Casnel's participation in protected activity, the record shows that Postmaster Taylor did not participate in the removal decision. There is also no evidence in the record that the removal decision-makers, Clarissa Lott or Joel Compton, had any knowledge of Ms. Casnel's prior or alleged protected activity. The General Counsel therefore cannot prove that Ms. Casnel's protected activity was a motivating reason for the decision terminate her.

Absent direct evidence of employer animus toward the protected activity, proof of discriminatory motivation may be based on circumstantial evidence, as described in Robert Orr/Sysco Food Services, 343 NLRB 1183, 1184 (2004):

To support an inference of unlawful motivation, the Board looks to such factors as inconsistencies between the proffered reasons for the discipline and other actions of the employer, disparate treatment of certain employees compared to other employees with similar work records or offenses, deviations from past practice, and proximity in time of the discipline to the union activity. (*citing Embassy Vacation Resorts*, 340 NLRB 846 (2003).

Counsel for the General Counsel may argue that the alleged failure to give Ms. Casnel timely notice of her investigative interview<sup>9</sup> is evidence of animus. However, the testimony and documentary evidence shows that delivery was attempted four days

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<sup>9</sup> Joint Exhibit 11(b)



before the interview and that Ms. Casnel did not check her mail. Furthermore, the removal after a previous suspension was consistent with contractual procedures so there was no deviation from past practice. Finally, there is no evidence of animus in the record as might be demonstrated by failure to provide stewards to employees or retaliation against other employees for engaging in protected activity. Therefore the evidence in this matter provides **no** circumstantial evidence of unlawful motivation.

If the General Counsel has satisfied the initial burden (which he has not done here), the employer may rebut the prima facie case by showing that prohibited motivations played no part in its actions. Wright Line, *supra*. However,

it is to be remembered that Respondent is required to establish its *Wright Line* defense only by a preponderance of the evidence. The Respondent's defense does not fail simply because not all the evidence supports it, or even because some evidence tends to negate it.

Merrilat Industries, 307 NLRB 1301, 1303 (1992).

In this instant matter, the record does not show that the removal decision-makers were aware of Ms. Casnel's prior protected activity. Even if they had known, Ms. Casnel's aggressive and insubordinate conduct on September 27, 2016, was more than sufficient to support a removal decision.

**c. Respondent Would Have Terminated Ms. Casnel, Even In the Absence of Any Protected Activity**

Even if, for the sake of argument, Counsel for the General Counsel could meet its burden to present sufficient evidence through the Wright Line factors to demonstrate a causal connection, Respondent would still have terminated Ms. Casnel, even in the absence of any protected activity. As amply demonstrated by the record and testimony, the decision to terminate Ms. Casnel was based on her gross insubordination on

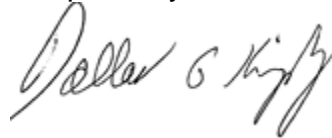
September 27, 2016, which followed a previous 14-day suspension for insubordination on August 1, 2016. This does not involve – or is it even tangentially related to – Ms. Casnel’s protected activity or her alleged protected concerted activity. Even absent her protected activity, Ms. Casnel still would have been terminated. Finally, given Ms. Casnel’s history of prior discipline, on-going insubordination, combative interactions with management and other employees, and her culminating outburst with her Postmaster, it is clear that the decision to terminate her was not pretextual. Based on the foregoing, General Counsel has not met his burden of proof that the Postal Service violated Sections 8(a) (1) and (3) of the Act as alleged.

### **III. CONCLUSION**

Based on all of the foregoing evidence and argument, Respondent maintains that it has not violated the Act, the Charging Party is not entitled to reinstatement or backpay and all of the allegations set forth in the Complaint should be dismissed.

DATED this 27<sup>th</sup> day of July, 2018.

Respectfully submitted,



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## CERTIFICATE OF SERVICE

The undersigned hereby certifies that copies of the foregoing **Respondent's Post-Hearing Brief** were sent this 27<sup>th</sup> day of July, 2018, as follows:

### **VIA E-FILING:**

HONORABLE ROBERT A. RINGLER  
ADMINISTRATIVE LAW JUDGE  
NATIONAL LABOR RELATIONS BOARD  
ADMINISTRATIVE LAW JUDGE DIVISION  
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### **ONE COPY VIA E-MAIL TO:**

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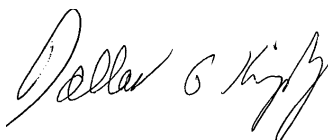
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